

Message Text

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ORIGIN STR-07

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AID-05 SS-15 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02
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E.O. 11652: N/A

TAGS: ETRD, MTN

SUBJECT: DRAFT INTEGRATED TEXT ON SAFEGUARDS

REF: GENEVA 9534

1. FOLLOWING ARE COMMENTS ON ISSUES RAISED IN PARAS 14 A
THROUGH G OF REFTEL:

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2. RE 14 A: WE WOULD BE PREPARED TO DISCUSS WORD
"SIGNIFICANT" IN CONTEXT OF FINDING ACCEPTABLE COMPROMISE
ON DEFINING PORTION OF DOMESTIC PRODUCERS WHOSE IMPORT-
CAUSED INJURY COULD WARRANT SAFEGUARD ACTION. ANY FINAL
AGREEMENT TO SUCH A CONCESSION WOULD DEPEND, OF COURSE, ON
CONCESSIONS GIVEN BY OTHERS IN AREAS OF CONCERN TO US. WE
WOULD PREFER THAT ADC LANGUAGE NOT BE USED AS IT CARRIES A

COMPLEX "BAGGAGE" AND SIMPLICITY SEEMS TO US MORE APPROPRIATE IN REGARD TO THIS ISSUE. (FYI: SEC.201(B)(2)(A) OF THE U.S. TRADE ACT ALREADY REFERS TO A SIGNIFICANT NUMBER OF FIRMS.

3. RE 14 B: MTN DEL SHOULD AT THIS POINT STICK TO POSITION AND FALL-BACK POSITION IN TPSC 78-68. IF WE CANNOT GET THE SPECIFIC TIME CALLED FOR IN U.S. LAW, THEN WE WOULD STRONGLY SUPPORT A GENERAL REQUIREMENT AS EARLIER PROPOSED BY EC. SUGGESTION OF A TIME LIMIT OF 12-24 MONTHS IS UNLIKELY TO BE ACCEPTABLE IN ANY FORM BECAUSE OF INCREASED BURDEN ON U.S.

ADMINISTRATIVE SYSTEM (FROM PROCEDURES REQUIRED WHENEVER EXTENSION SOUGHT) PLUS LIKELY CONGRESSIONAL PERCEPTION OF TIGHTENING U.S. SYSTEM.

4. RE 14 C, IN SEEKING COMPROMISE SOLUTION TO SELECTIVITY PROBLEM YOU MAY EXPLORE FOLLOWING POSSIBLE MODIFICATION OF U.S. PROPOSAL IN ATTACHMENT 3 TO TPSC 78-68.

(A) IF, IN A GIVEN SAFEGUARD CASE, INJURY OR THE THREAT THEREOF WERE CAUSED BY A SHARP AND SUBSTANTIAL INCREASE IN IMPORTS FROM ONE OR A LIMITED NUMBER OF COUNTRIES AND THE EFFECTS OF IMPORTS FROM OTHER SOURCES WERE NEGLIGIBLE, THE RESTRICTING COUNTRY WOULD BE PERMITTED TO APPLY A GLOBAL QUOTA ALLOCATED ACCORDING TO SUPPLIER SHARES IN A PREVIOUS LIMITED OFFICIAL USE

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REPRESENTATIVE PERIOD, TAKING INTO ACCOUNT THE NEED TO AVOID DISRUPTION OF IMPORTS HAVING NEGLIGIBLE EFFECTS (THIS MIGHT BE CONSIDERED ONE OF THE "SPECIAL FACTORS" REFERRED TO IN ARTICLE XIII 2 (D)).

(B) THIS RIGHT, HOWEVER, WOULD BE QUALIFIED BY THE CONDITION THAT ALLOCATION OF THE QUOTA BE REASONABLE AND EQUITABLE IN THE CIRCUMSTANCES OF THE PARTICULAR CASE.

(C) NORMALLY, THE PROCEDURES IDENTIFIED IN TPSC 78-68 WOULD APPLY. HOWEVER, IF THE QUOTA IS APPLIED IN CRITICAL CIRCUMSTANCES PURSUANT TO GATT ARTICLE XIX:2 -- THAT IS, WITHOUT PRIOR CONSULTATION -- THE MATTER WOULD BE REVIEWED BY THE SAFEGUARD COMMITTEE IMMEDIATELY UPON REQUEST OF ANY SIGNATORY. THE REVIEW WOULD HAVE TO BE COMPLETED WITHIN A SPECIFIED PERIOD OF TIME (SAY 30 DAYS) AND THE MEASURE COULD NOT REMAIN IN FORCE WITHOUT COMMITTEE APPROVAL.

5. THIS ARRANGEMENT WOULD ALLOW A CODE SIGNATORY TO TAKE A UNILATERAL GLOBAL ACTION THAT WOULD RESTRICT IMPORTS FROM ONE OR TWO SOURCES WHILE PROVIDING LESS RESTRICTIVE OR EVEN CEILING QUOTAS (QUOTAS LARGER THAN CURRENT TRADE)

FOR OTHER SUPPLIERS. THE RESTRICTING COUNTRY WOULD, OF COURSE, HAVE TO ACT REASONABLY IN ORDER TO AVOID A COMMITTEE REVIEW OR TO DEFEND ITS ACTION IN SUCH A REVIEW.

6. THE EC/NORDICS COULD CLAIM A VICTORY SINCE THIS ARRANGEMENT WOULD REQUIRE A CHANGE IN THE APPLICATION OF GATT RULES TO PERMIT RESTRICTION OF A DISRUPTIVE SUPPLIER WITHOUT IMMEDIATELY AFFECTING THE TRADE OF OTHER SUPPLIERS. MFN SUPPORTERS, ON THE OTHER HAND, WOULD PROBABLY NOT REGARD THE ARRANGEMENT AS DEPARTING VERY MUCH FROM CURRENT PRACTICE.

7. WE DO NOT WISH AT THIS STAGE TO FURNISH A SPECIFIC TEXTUAL PROPOSAL. THE IMPORTANT THING IS TO SHIFT THE LIMITED OFFICIAL USE

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DISCUSSION OUT OF THE PURELY SELECTIVE FRAMEWORK IN WHICH CHAPTER 4 ALTERNATIVES ARE NOW CAST INTO A FRAMEWORK THAT ENGAGES THE INTERESTS OF ALL SUPPLIERS AT THE OUTSET IN ANY GIVEN SAFEGUARD ACTION.

8. 14 E: LANGUAGE IN PARA 10 MAY ULTIMATELY BE ACCEPTABLE BUT ONLY IF IT IS CLEAR THAT CONSULTATIONS COULD BE BOTH BILATERAL AND MULTILATERAL (IN THE COMMITTEE) AND IF OTHER CODE PROVISIONS ASSURING RIGHT OF AFFECTED THIRD PARTIES TO BRING ISSUE TO COMMITTEE FOR REVIEW, AND ADEQUATE NOTIFICATION PROCEDURES, ARE RETAINED.

9. RE 14 F: WE COULD DISCUSS POSSIBILITY OF AN "EXHAUSTION OF REMEDIES" SOLUTION AS COMPROMISE. IN OUR VIEW, CANADIAN PROPOSAL OF SPECIFIC DELEGATION OF XXII AND XXIII FUNCTIONS SHOULD BE CONSIDERED ONLY IF IT WOULD BE COMPATIBLE WITH OVERALL DISPUTE SETTLEMENT FORMAT IN OTHER AREAS OF NEGOTIATIONS. WE COULD DISCUSS IDEA OF DELEGATING ARTICLE XIX FUNCTIONS SINCE THAT DELEGATION IS COMPATIBLE WITH OUR POSITION INsofar AS SAFEGUARDS IS CONCERNED. IT DOES SEEM TO US, HOWEVER, THAT THE US - EC LANGUAGE MOST CLEARLY EXPRESSES OUR VIEW OF HOW THIS ISSUE SHOULD BE HANDLED.

10. REF 14 G: THIS ISSUE WILL HAVE TO BE CONSIDERED IN CONNECTION WITH PROGRESS ON THE LICENSING CODES.

11. FYI: RE PARA 2 ABOVE, USDA CONCERNED THAT INDUSTRY BE DEFINED TO REFER TO AN INJURED SEGMENT OF AN INDUSTRY, E.G., THE WINTER TOMATO INDUSTRY WHICH IS INJURED BY FLOODS OF IMPORTS WHEREAS TOMATO PRODUCING INDUSTRY AS A WHOLE MAY NOT BE AFFECTED. VANCE

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